

MONTANA LEGISLATIVE HISTORY

Chapter 106 19 89

Bill H _____ S 170 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 28 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Date Out Feb 28 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 24 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Jan 24 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE FINAL STATUS

3/20 HEARING
 3/21 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
 3/27 2ND READING CONCURRED AS AMENDED 77 15
 3/29 3RD READING CONCURRED 75 21

RETURNED TO SENATE WITH AMENDMENTS
 4/04 2ND READING AMENDMENTS CONCURRED 49 0
 4/06 3RD READING AMENDMENTS CONCURRED 48 0

4/13 SIGNED BY PRESIDENT
 4/17 SIGNED BY SPEAKER
 4/18 TRANSMITTED TO GOVERNOR
 4/21 SIGNED BY GOVERNOR
 CHAPTER NUMBER 605 EFFECTIVE DATE: 4/21/89

SB 170 INTRODUCED BY JERGSON, ET AL.
 ALLOW DANGEROUS OFFENDER DESIGNATION ON REVOCATION
 OF PROBATION

1/17 INTRODUCED
 1/17 REFERRED TO JUDICIARY
 1/24 HEARING
 1/26 COMMITTEE REPORT--BILL PASSED AS AMENDED
 1/28 2ND READING PASSED 44 0
 1/31 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
 2/21 REFERRED TO JUDICIARY
 2/28 HEARING
 3/01 COMMITTEE REPORT--BILL CONCURRED
 3/04 2ND READING CONCURRED 84 1
 3/06 3RD READING CONCURRED 91 2

RETURNED TO SENATE
 3/10 SIGNED BY PRESIDENT
 3/11 SIGNED BY SPEAKER
 3/11 TRANSMITTED TO GOVERNOR
 3/15 SIGNED BY GOVERNOR
 CHAPTER NUMBER 106 EFFECTIVE DATE: 10/01/89

SB 171 INTRODUCED BY PINSONEAULT
 CLARIFY DUTIES OF FORENSIC SCIENCE AGENCIES AND
 AGENCY DIRECTORS
 BY REQUEST OF DEPARTMENT OF JUSTICE

1/18 INTRODUCED
 1/18 REFERRED TO STATE ADMINISTRATION
 1/23 HEARING
 1/23 COMMITTEE REPORT--BILL PASSED
 1/25 2ND READING PASSED 50 0
 1/27 3RD READING PASSED 48 0

TRANSMITTED TO HOUSE
 2/21 REFERRED TO STATE ADMINISTRATION
 3/07 HEARING
 3/07 TABLED IN COMMITTEE

SB 172 INTRODUCED BY PINSONEAULT, ET AL.
 ESTABLISH AS A CRIME SEXUAL SOLICITATION IN EXCHANGE
 FOR OR IN ADDITION TO FEES CHARGED FOR

This bill would give enforcement an opportunity to charge properly those people who were involved with large scale drug manufacturing operations, he said.

Questions From Committee Members: None

Closing by Sponsor: Sen. Jergeson thanked the committee for hearing the bill.

DISPOSITION OF SENATE BILL 140

Discussion: There was none.

Amendments and Votes: There were none.

Recommendation and Vote: Senator Mazurek MOVED that Senate Bill 140 DO PASS. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 170

Presentation and Opening Statement by Sponsor: Sen. Jergeson of Chinook, representing District #8, stated that the bill was introduced at the request of the Montana County Attorneys' Association. He said the bill provided that a dangerous offender designation could be made at the time of parole violation, rather than at the time of sentencing. He added that there were some problems in the drafting of the bill and he had prepared some amendments. (See Exhibit #2.)

List of Testifying Proponents and What Group they Represent:

John Connor, Department of Justice, representing the Montana County Attorney's Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

John Connor explained that this bill was also requested to address a problem that occurred with respect to the statutes in criminal offenses. He said that MCA 46-23-201 provided that a person may not be paroled until he has served one half of his time, unless he is designated a non-dangerous offender. Then, he is eligible for parole when he has served one quarter of

his time. MCA 46-18-44 deals with the process by which the court makes its determination of eligibility for designating a dangerous or non-dangerous offender. The problem is that, when most people appear in court for sentencing, they are not sentenced to prison. This bill presumes a prison sentence. This bill proposes to give the court the discretion to make that determination of dangerous or non-dangerous offender for purposes of parole.

Questions From Committee Members: Sen. Crippen asked Mr. Connor about the amendments. Mr. Connor explained that there was a problem in final drafting of the bill. The bill, as it was originally introduced, was a little confusing and needed clarification.

Sen. Mazurek asked Mr. Connor about the amendments, questioning the use of the term "dangerous offender." Mr. Connor thought it would be appropriate to use the term "dangerous offender".

Closing by Sponsor: Sen. Jergeson thanked the committee for hearing the bill.

DISPOSITION OF SENATE BILL 170

Discussion: Senator Crippen asked that the word "a" be added to the amendments on p. 2, line 10, as well as on lines 17 and 22. Senator Mazurek asked about retroactive possibilities. Valencia Lane said she had discussed that with the Attorney General, who thought it could be a problem.

Senator Crippen wondered about striking New Section 2. Valencia said that, if that portion was not included, there would be litigation. She said that, unless the "dangerous offender" designation was made, it was assumed the person was "non-dangerous." She said there had been a case in which the the State unsuccessfully attempted to declare a person "dangerous." She told the committee there was a problem with the statute because it contained a double negative. The intent of this bill was to say that a determination should be made at the time of probation.

Senator Mazurek asked if the "dangerous offender" designation would be made at the time of sentencing if the person plead guilty. Senator Halligan said that the sentencing court could take everything into consideration.

Valencia said that, if a person is a "dangerous offender,"

they were required to serve the full time. In some cases, the designation was never addressed, she stated, because the person hadn't gone to jail. The intent was simply to be able to address the issue when the person was being sent to prison.

Amendments and Votes: Senator Halligan MOVED the amendments. The MOTION CARRIED UNANIMOUSLY.

Recommendation and Vote: Senator Halligan MOVED that Senate Bill 170 DO PASS AS AMENDED. The MOTION CARRIED on a vote of 9 to 1 with Senator Mazurek voting NO.

HEARING ON SENATE BILL 180

Presentation and Opening Statement by Sponsor: Sen. Mazurek of Helena, representing District #23 stated that he introduced this bill on his own. The bill allowed for the creation of a custodial trust, simply done, and allows the owner of the property to retain control of the property with the right and benefit of the trust currently and in the future. It would allow someone with moderate means, who could not afford to have worked with an attorney, to set up an elaborate estate, plan tax avoidance, generation skipping and avoid probate, he stated. It would allow for the transfer, ownership and management of property, and for preservation of the property, on behalf of the owner. This different from other trusts, in that it gives beneficiaries control to direct the payment of income to themselves, he said. It also allows them to direct the investment and management of the property. He said there were limitations on the trust. Section 6 allows others to use the provisions of this act. He said that a debtor owing money may designate and pay a custodial trustee the debt. In addition, a third party can take advantage of this provision to pay a debt that is owed to someone and make that person a custodial trustee to satisfy that obligation. (Exhibit 3)

List of Testifying Proponents and What Group they Represent:

Molly Munro, AARP

List of Testifying Opponents and What Group They Represent:

None

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-24-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓	arrived late	✓
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

January 24, 1986

HON. PRESIDENT:

We, your committee on Judiciary, having had under consideration SB 170 (first reading copy -- white), respectfully report that SB 170 be amended and as so amended do pass:

1. Title, line 5.

Following: the first "or"

Insert: "DANGEROUS OR"

2. Page 2, line 10.

Strike: "(a)"

3. Page 2, line 11.

Following: line 10

Strike: "not eligible to be designated as a nondangerous offender"

Insert: "a dangerous offender"

4. Page 2, line 14.

Strike: "(b)"

5. Page 2, lines 16 and 17.

Following: "determination" on line 16

Strike: the remainder of line 16 through "nondangerous" on line 17

Insert: "that the offender is a dangerous"

6. Page 2, lines 22 and 23.

Following: "of" on line 22

Strike: the remainder of line 22 through "nondangerous" on line 23

Insert: "whether the"

7. Page 2, line 23.

Following: "offender"

Insert: "is a dangerous or nondangerous offender"

AND AS AMENDED DO PASS

Signed: _____

Bruce D. Crippen, Chairman

41.C.
1/25
0
SB 170-123 51

Amendments to Senate Bill No. 170
First Reading Copy (WHITE)Requested by the Attorney General's Office
For the Committee on JudiciaryPrepared by Valencia Lane
January 23, 1989

- ✓1. Title, line 5.
Following: the first "OF"
Insert: "DANGEROUS OR"
- ✓2. Page 2, line 10.
Strike: "(a)"
- ✓3. Page 2, line 11.
Following: line 10
Strike: "not eligible to be designated as a nondangerous offender"
Insert: "dangerous"
- ✓4. Page 2, line 14.
Strike: "(b)"
- ✓5. Page 2, lines 16 and 17.
Following: "determination" on line 16
Strike: the remainder of line 16 through "offender" on line 17
Insert: "that the offender is dangerous"
- ✓6. Page 2, lines 22 and 23.
Following: "of" on line 22
Strike: the remainder of line 22 through "nondangerous" on line 23
Insert: "whether the"
- ✓7. Page 2, line 23.
Following: "offender"
Insert: "is dangerous or nondangerous"

EXHIBIT NO. 3222
DATE 1-24-89
BILL NO. SB 170

1st Legislature

LC 0678/01

LC 0678/01

Senate BILL NO. 170

2 INTRODUCED BY Ferguson
3 Bachini Bob Thomas px sm

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DESIGNATION
5 OF ^A **DANGEROUS OR** NONDANGEROUS OFFENDER TO BE MADE AT THE TIME OF
6 REVOCATION OF A PROBATIONARY SENTENCE; AMENDING SECTION
7 46-18-404, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY
8 DATE."
9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 46-18-404, MCA, is amended to read:

12 "46-18-404. Designation as nondangerous offender for
13 purposes of parole eligibility. (1) The Except as provided
14 in subsection (4), the sentencing court shall designate an
15 offender a nondangerous offender for purposes of eligibility
16 for parole under part 2 of chapter 23 if:

17 (a) during the 5 years preceding the commission of the
18 offense for which the offender is being sentenced, the
19 offender was neither convicted of nor incarcerated for an
20 offense committed in this state or any other jurisdiction
21 for which a sentence to a term of imprisonment in excess of
22 1 year could have been imposed; and

23 (b) the court has determined, based on any presentence
24 report and the evidence presented at the trial and the
25 sentencing hearing, that the offender does not represent a

1 substantial danger to other persons or society.

2 (2) A conviction or incarceration may not be
3 considered under subsection (1)(a) if:

4 (a) the offender was less than 18 years of age at the
5 time of the commission of the present offense; or

6 (b) the offender has been pardoned for the previous
7 offense on the grounds of innocence or the conviction for
8 such the offense has been set aside in a postconviction
9 hearing.

10 (3) ~~(1)~~ If the court determines that an offender is
11 ~~not eligible to be designated as a nondangerous offender,~~ ^{dangerous} it
12 shall make that determination a part of the sentence imposed
13 and shall state the determination in the judgment.

14 ~~(b)~~ Whenever Except as provided in subsection (4), if
15 the sentence and judgment do not contain such a
16 determination ~~referred to in subsection (3)(a) as~~
17 that the offender is dangerous ~~nondangerous offender,~~ the offender is considered to have
18 been designated as a nondangerous offender for purposes of
19 eligibility for parole.

20 (4) If an offender is given a probationary sentence
21 that is subsequently revoked, the court may make the
22 determination of ~~whether the offender is~~ ^{whether the offender is}
23 ~~nondangerous~~ ^{to dangerous or nondangerous} offender at the time of the revocation
24 proceeding."

25 NEW SECTION. Section 2. Retroactive applicability.

NAME :

John Connor

DATE _____

1-24-59

DATE: 11/11/54

NO 24/89 SB 170

ADDRESS :

Dept of Justice

PHONE :

444-2026

REPRESENTING WHOM?

Mont. County Attorneys Assn

APPEARING ON WHICH PROPOSAL:

SP170

DO YOU:

SUPPORT?



AMEND?

OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 1-24-89 Senate Bill No. 170 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK		✓
SEN. PINSONEAULT	✓	
SEN. YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: Amend - UNAN
DPA - 9-1

Amendments, Discussion, and Votes: Rep. Addy moved to amend so that instead of a, b, and c under 1, 1 would just read "a person commits the offense of criminal possession if he possesses P2P with the intent to manufacture amphetamines or methamphetamines". Rep. Gould seconded the motion.

Rep. Mercer moved to keep sub a "P2P with the intent to manufacture either amphetamines or methamphetamines or both" then have; or and turn d into b. Rep. Addy said he would agree and accepted Rep. Mercer's motion to amend. Rep. Gould seconded the motion.

The motion to amend CARRIED unanimously.

Recommendation and Vote: Rep. Addy moved SB 140 BE CONCURRED IN AS AMENDED, motion seconded by Rep. Gould. Motion CARRIED unanimously.

HEARING ON SENATE BILL 170

Presentation and Opening Statement by Sponsor:

Sen. Jergeson opened the hearing stating that a judge is allowed to designate an offender as dangerous or non dangerous upon conviction if the person is being sentenced to serve time in prison. However, if the defendant is not sentenced to serve time but is given probation or some other kind of sentence, there is no designation of whether or not that person is dangerous or non dangerous. Occasionally law enforcement has found later, while the person is serving the probationary period, the person does something which causes consideration of sending the offender on to prison. The judge is not allowed to declare the offender as dangerous or non dangerous at that time. So, the assumption is that the offender is non dangerous. SB 170 provides an opportunity for the judge to weigh the issues and determine at the time the probation is revoked, whether or not the person should be declared a dangerous offender.

Testifying Proponents and Who They Represent:

John Connor, Department of Justice

Proponent Testimony:

John Connor told the committee this bill was requested to deal with a problem in terms of determination of parole eligibility. Section 46-23-201 provides that a person cannot be paroled until he has served one half of his time less good time. The statute also says if a person is designated as a non dangerous offender he is eligible for parole after serving one fourth of his time. The court has to make a determination at the time the defendant is sentenced, then, as to whether or not he is dangerous or non dangerous. If there is no designation made, according to

the statute the person is assumed to be non dangerous. The problem this bill is trying to address occurs because of the fact that in most cases people are not sent to prison, they are put on probation. So, when they appear for sentencing no determination of dangerous or non dangerous appears in the judgment. They are simply given a suspended or deferred sentence with conditions imposed and the question of dangerous or non dangerous is not addressed. If the person then violates probation and comes back before the court on a revocation proceeding, the court is prohibited from making a determination of dangerous or non dangerous.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

No questions were asked.

Closing by Sponsor: Sen. Jergeson closed.

DISPOSITION OF SENATE BILL 170

Motion: Rep. Gould moved SB 170 BE CONCURRED IN. Rep. Addy seconded the motion.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion and CARRIED unanimously.

HEARING ON SENATE BILL 103

Presentation and Opening Statement by Sponsor:

Sen. Jergeson opened the hearing saying the original bill said a person who is injured in the commission of a felony or while fleeing from the commission of a felony could not sue to recover damages. The Senate added amendments before sending it to the House. Currently a judge, when he is sentencing a person who has been convicted of a crime, has the right to deny that particular offender some of their civil rights including the right to sue people for injuries he has sustained. This bill would make it mandatory rather than leaving it to the judge's discretion.

Testifying Proponents and Who They Represent:

John Connor, Department of Justice and Montana County Attorneys Association

DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date FEBRUARY 28, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY			X
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH			X
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

February 28, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 170 (blue reference copy) be concurred in .

Signed: 
Dave Brown, Chairman

[TO BE SPONSORED BY REP. GOULD]

JUDICIARY

DATE FEB. 28, 1989